

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	Civil Action No.
v.	)	
	)	
	)	
AMERICAN IRON OXIDE COMPANY and	)	
MAGNETICS INTERNATIONAL, INC.	)	
	)	
Defendants.	)	
_____	)	

CONSENT DECREE

## TABLE OF CONTENTS

I.	JURISDICTION AND VENUE . . . . .	2
II.	APPLICABILITY . . . . .	3
III.	DEFINITIONS . . . . .	4
IV.	CIVIL PENALTY . . . . .	6
V.	COMPLIANCE REQUIREMENTS . . . . .	7
VI.	SUPPLEMENTAL ENVIRONMENTAL PROJECT . . . . .	14
VII.	REPORTING REQUIREMENTS . . . . .	18
VIII.	STIPULATED PENALTIES . . . . .	21
IX.	FORCE MAJEURE . . . . .	28
X.	DISPUTE RESOLUTION . . . . .	30
XI.	INFORMATION COLLECTION AND RETENTION . . . . .	33
XII.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS . . . . .	36
XIII.	COSTS . . . . .	37
XIV.	NOTICES . . . . .	38
XV.	EFFECTIVE DATE . . . . .	39
XVI.	RETENTION OF JURISDICTION . . . . .	39
XVII.	MODIFICATION . . . . .	40
XVIII.	TERMINATION . . . . .	40
XIX.	PUBLIC PARTICIPATION . . . . .	41
XX.	SIGNATORIES/SERVICE . . . . .	42
XXI.	INTEGRATION . . . . .	42
XXII.	FINAL JUDGMENT . . . . .	43
XXIII.	APPENDICES . . . . .	43

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	
AMERICAN IRON OXIDE COMPANY and	)	
MAGNETICS INTERNATIONAL, INC.	)	
	)	
Defendants.	)	
<hr/>		

CONSENT DECREE

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (EPA), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendants American Iron Oxide Company (AMROX) and Magnetix International, Inc. (Magnetix) (collectively Defendants), violated Sections 112 and 502 of the Clean Air Act (CAA), 42 U.S.C. §§ 7412, 7661a.

The Complaint alleges that: (1) Defendants failed to properly control hydrochloric acid and chlorine emissions from their facilities in Portage, Porter County, Indiana (Portage Facility), and Burns Harbor, Porter County, Indiana (Magnetix Facility), and Grandview, Spencer County, Indiana (Rockport Facility), (the Facilities) in violation of CAA Section 112, 42 U.S.C. § 7412, and the regulations promulgated thereunder at 40 C.F.R. Part 63, Subpart CCC - National Emission Standards for

Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants (Steel Pickling NESHAP); and (2) AMROX failed to obtain a Title V permit for its Portage Facility in violation of CAA Section 502, 42 U.S.C. § 7661a and the regulations promulgated thereunder at 40 C.F.R. Part 70.

Defendants deny liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CAA Section 113(b), 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and

(c) and 1395(a), because some of the violations alleged in the Complaint are alleged to have occurred in, and Defendants conduct business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree or such action and over Defendant and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to CAA Sections 112 and 502, 42 U.S.C. § 7412 and 42 U.S.C. § 7661a.

3. Notice of the commencement of this action has been given to the State of Indiana, as required by CAA Section 113, 42 U.S.C. § 113(b).

## II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed

transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Northern District of Indiana, Hammond Division, and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facilities without complying with this Paragraph constitutes a violation of this Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

7. Terms used in this Consent decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIII);

c. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

d. "Defendant(s)" shall mean American Iron Oxide Company (AMROX) and Magnetics International, Inc. (Magnetics). AMROX is a joint venture partnership between International Steel Services, Inc., MCP Iron Oxide, Inc. and MAC-ROX, Inc., and shall be responsible for this Consent Decree relative to the Portage and Rockport Facilities. Magnetics is a wholly-owned subsidiary of International Steel Services, Inc., and shall be responsible for this Consent Decree relative to the Magnetics Facility.

e. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

f. "Magnetics Facility" shall mean the hydrochloric acid regeneration plant as that term is defined in 40 C.F.R. § 63.1155, including all structures and land, located at 1111 N. State Road 149, Burns Harbor, Porter County, Indiana 46304.

g. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

h. "Parties" shall mean the United States and Defendants;

i. "Portage Facility" shall mean the hydro-chloric acid regeneration plant as that term is defined in 40 C.F.R. § 63.1155, including all structures and land, currently owned and operated by AMROX, located at 6300 US Highway Route 12, Portage, Porter County, Indiana 46368-1287;

j. "Rockport Facility" shall mean the hydro-chloric acid regeneration plant as that term is defined in 40 C.F.R. § 63.1155, including all structures and land, owned and operated by AMROX, located at 2001 East County Road 700 North, Grandview, Spencer County, Indiana 47615;

k. "Section" shall mean a portion of this Decree identified by a Roman numeral;

l. "State" shall mean the State of Indiana; and

m. "United States" shall mean the United States of America, acting on behalf of EPA.

#### IV. CIVIL PENALTY

8. Within 30 days after the Effective Date of this Consent Decree, Defendants shall pay the sum of \$100,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is entered by the Court, at the rate



specified in 28 U.S.C. §1961 as of the date of entry. Payment shall be made by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice in accordance with instructions to be provided to Defendants, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Indiana, Hammond Division. At the time of payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-2-1-07939 and the civil action number of this case) to the United States in accordance with Section XIV of this Decree (Notices).

9. Defendants shall not deduct the civil penalty paid under this Section in calculating their federal income tax.

V. COMPLIANCE REQUIREMENTS

10. Portage Facility:

a. At the Portage Facility, by November 1, 2005, Defendants completed implementation of all of the work listed in Appendix A. Appendix A shall be an enforceable part of this Decree.

b. At the Portage Facility, by no later than thirty (30) days after the Effective Date of this Consent Decree, Defendants shall comply with the Steel Pickling NESHAP, 40 C.F.R. §§ 63.1155 through 63.1166.

c. By no later than thirty (30) days after the Effective Date of this Consent Decree, Defendants shall provide notification that the Portage Facility is subject to the Steel Pickling NESHAP in accordance with the requirements of 40 C.F.R. § 63.1163(a).

d. By no later than sixty (60) days after the date of performance of a stack test, Defendants shall submit the results of the stack test in accordance with the requirements of the Steel Pickling NESHAP set forth at 40 C.F.R. § 63.1164(a).

e. By no later than sixty (60) days after the date of performance of the stack test at the Portage Facility, Defendants shall provide notification of compliance status for the Portage Facility in accordance with the requirements of the Steel Pickling NESHAP set forth at 40 C.F.R. § 63.1163(a).

f. By no later than thirty (30) days after the Effective Date of this Consent Decree, Defendants shall submit a startup, shutdown, and malfunction plan for the Portage Facility in accordance with the requirements of the Steel Pickling NESHAP set forth at 40 C.F.R. § 63.1164(c)(1).

g. By no later than thirty (30) days after the Effective Date of this Consent Decree, Defendants shall comply with the record-keeping requirements of the Steel Pickling NESHAP set forth at 40 C.F.R. § 63.1165 at the Portage Facility.

h. By no later than (30) days after the Effective Date of this Consent Decree, Defendants shall submit any Title V permit applications required for the Portage Facility.

11. Magnetics Facility:

a. At the Magnetics Facility, by no later than October 30, 2006, Defendants shall complete the implementation of all of the work listed in Appendix A. Appendix A shall be an enforceable part of this Decree.

b. By no later than October 31, 2006, Defendants shall comply with the Steel Pickling NESHAP, 40 C.F.R. §§ 63.1155 through 63.1166, at the Magnetics Facility.

c. By no later than thirty (30) days after the Effective Date of this Consent Decree, Defendants shall provide notification that the Magnetics Facility is subject to the Steel Pickling NESHAP in accordance with the requirements of 40 C.F.R. § 63.1163(a).

d. By no later than sixty (60) days after the date of performance of a stack test, Defendants shall submit the results of the stack test in accordance with the requirements of the Steel Pickling NESHAP set forth at 40 C.F.R. § 63.1164(a).

e. By no later than sixty (60) days after the date of performance of the stack test at the Magnetics Facility, Defendants shall provide notification of compliance status for

the Magnetism Facility in accordance with the requirements of the Steel Pickling NESHAP set forth at 40 C.F.R. § 63.1163(a).

f. By no later than thirty (30) days after the Effective Date of this Consent Decree, Defendants shall submit a startup, shutdown, and malfunction plan for the Magnetism Facility in accordance with the requirements of the Steel Pickling NESHAP set forth at 40 C.F.R. § 63.1164(c)(1).

g. By no later than thirty (30) days after the Effective Date of this Consent Decree, Defendants shall comply with the record-keeping requirements of the Steel Pickling NESHAP set forth at 40 C.F.R. § 63.1165 at the Magnetism Facility.

h. Roaster B at the Magnetism Facility is not currently operating. In the event that Roaster B is restarted, Defendants shall stack test Roaster B by the later of October 30, 2006, or within 180 days of the start-up. Defendants shall comply with all other requirements set forth herein for Roaster B.

12. Rockport Facility:

a. At the Rockport Facility, by no later than June 1, 2006, Defendants shall complete implementation of all of the work listed in Appendix A. Appendix A shall be an enforceable part of this Decree.

b. By no later than September 30, 2006, Defendants shall determine, through stack testing, whether the

Rockport Facility is subject to the Steel Pickling NESHAP, 40 C.F.R. §§ 63.1155 through 63.1166.

c. By no later than sixty (60) days after the date of performance of a stack test, Defendants shall submit the results of the stack test.

d. If stack testing demonstrates that the Rockport Facility is a major source, the Rockport Facility shall be deemed subject to the Steel Pickling NESHAP, 40 C.F.R. §§ 63.1155 through 63.1166, and Defendants shall comply with the provisions of the Steel Pickling NESHAP, including the notification provisions, the shutdown, startup, malfunction plan requirements, the record-keeping and reporting requirements, and the emission limits.

e. If it is determined, through stack testing, that the Rockport Facility is a major source subject to the Steel Pickling NESHAP, 40 C.F.R. §§ 63.1155 through 63.1166, Defendants shall submit a Title V permit application within sixty (60) days of determining the Facility's major source status.

13. At least sixty (60) days prior to conducting a stack test at each of the Facilities, Defendants shall provide notification of the stack test in the manner required by 40 C.F.R. § 63.1163(d). If a modification is made to the test method being proposed, the stack test protocol must include the

modification that is being made to the test method and an explanation as to the need for that modification.

14. When applicable, the Defendants shall submit progress reports for each Facility in accordance with the requirements of the Steel Pickling NESHAP at 40 C.F.R. § 63.1164(b).

15. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission in its entirety.

16. If the submission is approved pursuant to Paragraph 15(a), Defendants shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 15(b) or (c), Defendants shall, upon written direction of EPA, take all actions required by the approved plan, report, or other item that EPA determines is technically severable from any disapproved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions under Section X of this Decree (Dispute Resolution).

17. If the submission is disapproved in whole or in part pursuant to Paragraph 15(c) or (d), Defendants shall, within 45 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

18. Any Stipulated Penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the 45-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

19. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Defendants' right to invoke Dispute Resolution and the right of EPA to seek Stipulated Penalties as provided in the preceding Paragraphs.

20. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

#### VI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. Defendants shall implement two Supplemental Environmental Projects (SEPs) in accordance with all provisions of Appendix B to this Consent Decree, which is attached hereto and incorporated into this Decree by reference. The two SEPs are (1) an odor impact assessment program and, (2) a health risk assessment. The SEPs shall be completed within one year after entry of this Decree. The odor impact assessment program SEP shall determine whether, and the extent to which, odors from the Portage Facility impact the neighborhoods surrounding the Portage Facility and Amrox shall implement any measures recommended under the study to address odor issues from the Portage Facility. The



health risk assessment SEP shall determine whether emissions from the Portage Facility carry any significant potential health risk for the neighborhoods surrounding the Portage Facility and AMROX shall implement any measures recommended under the study to address emissions with any significant potential health risks. In implementing the SEPs, Defendants shall spend not less than \$34,000 in eligible SEP costs.

22. Defendants are responsible for the satisfactory completion of the SEPs in accordance with the requirements of this Decree. "Satisfactory completion" means that Defendants shall complete the work to EPA's satisfaction as set forth in Paragraph 26, in accordance with all work plans and specifications for the project and shall spend not less than the amount set forth in Paragraph 21, above. Defendants may use contractors or consultants in planning and implementing the SEPs.

23. With regard to the SEPs, Defendants certify the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and represents a fair estimate of the costs necessary to implement the SEPs;

b. that, as of the date of executing this Decree, Defendants are not required to perform or develop the SEPs by any federal, state, or local law or regulation and are

not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEPs are not projects that Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendants have not received, and are not negotiating to receive, credit for the SEPs in any other enforcement action;

e. that Defendants will not receive any reimbursement for any portion of the SEPs from any other person; and

f. That Defendants will not deduct the cost of the SEPs in calculating their federal income tax.

24. SEP Completion Report

a. Within 30 days after the date set for completion of the SEPs, Defendants shall submit a SEP Completion Report to the United States, in accordance with Section XIV of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

i. a detailed description of the SEP as implemented;

ii. a description of any problems encountered in completing the SEP and the solutions thereto;

iii. an itemized list of all eligible SEP costs;

iv. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

25. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendants shall provide such information.

26. After receiving the SEP Completion Report, EPA, in its unreviewable discretion shall determine, and notify Defendants whether or not Defendants have satisfactorily completed the SEP. If the SEP has not been satisfactorily completed in accordance with all applicable work plans and schedules, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 21, above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

27. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section X of this Decree (Dispute Resolution). No other

disputes arising under this Section shall be subject to Dispute Resolution.

28. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 33, below.

29. Any public statement, oral or written, in print, film, or other media, made by Defendants making reference to the SEP under this Decree shall include the following language:  
"This project was undertaken in connection with the settlement of an enforcement action, United States v. American Iron Oxide Company, et al. (N.D. Ind.), brought on behalf of the U.S. Environmental Protection Agency under the Clean Air Act."

#### VII. REPORTING REQUIREMENTS

30. Defendants shall submit the following reports:

a. Within 30 days after the end of each calendar-year quarter (i.e., by April 30, July 30, October 30, and January 30) after lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII, Defendants shall submit to EPA a quarterly report for the preceding quarter that shall include (i) the status of any compliance measures, required in Paragraphs 10 through 14, above, including dates of submission of required reports and/or notifications; (ii) completion dates of the modifications required in Appendix A; (iii) any problems encountered or anticipated, together with

implemented or proposed solutions; (iv) status of permit applications; (v) operation and maintenance issues, including any reports submitted pursuant to the startup, shutdown and malfunction plan; and (vi) a discussion of Defendants' progress in satisfying their obligations in connection with the SEPs under Section VI of this Decree including, at a minimum, a narrative description of activities undertaken, compliance with the schedules or milestones set forth in the SEP Work Plan (attached as Appendix B to this Decree), and a summary of costs incurred since the previous report.

b. If Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Decree, Defendants shall notify the United States of such violation and its likely duration, in writing, within ten working days of the day Defendants first became aware of the violation or of the likelihood of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall so state in the report. Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendants became aware of the cause of the violation. Nothing in this

Paragraph or the following Paragraph relieves Defendants of their obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

31. Whenever any violation of this Consent Decree or any other event affecting Defendants' performance under this Decree, or the performance of any of the Facilities, may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendants first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

32. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices).

33. Each report submitted by Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

34. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by CAA Section 112 and 502, 42 U.S.C. §§ 7412, 7661, or the implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

35. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### VIII. STIPULATED PENALTIES

36. If Defendants fail to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendants shall pay a stipulated penalty of

\$5000 per day for each day that the payment is late. Late payment of the civil penalty shall be made in accordance with Section IV, Paragraph 8, above. Stipulated Penalties shall be paid in accordance with Section VIII, Paragraph 45, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 8, above.

37. Defendants shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

38. Compliance Milestones

a. The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements identified in Paragraphs 10 through 14:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day



\$500

15th through 30th day \$1000 31st  
day and beyond

b. The following Stipulated Penalties shall  
accrue per violation per day for each violation of the  
notification requirements identified in Paragraphs 10c., 10 e.,  
11. c., 11. e., 12 d., and 13:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1000	31st day and beyond

c. The following Stipulated Penalties shall  
accrue per violation per day for each violation of the  
performance test report requirements identified in Paragraph 10.  
d., 11. d., 12. c.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1000	31st day and beyond

d. The following Stipulated Penalties shall  
accrue per violation per day for each violation of the progress  
report requirements identified in Paragraph 14:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day

\$500	15th through 30th day
\$1000	31st day and beyond

e. The following Stipulated Penalties shall accrue per violation per day for each violation of the startup, shutdown and malfunction plan requirements identified in Paragraphs 10. f., 11. f. and 12. d.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1000	31st day and beyond

f. The following Stipulated Penalties shall accrue per violation per day for each violation of the record-keeping requirements identified in Paragraphs 10. g., 11. g., and 12. d.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1000	31st day and beyond

39. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day

\$500	15th through 30th day
\$1000	31st day and beyond

40. SEP Compliance

a. If Defendants have spent less than the amount set forth in Paragraph 21, above, Defendants shall pay a stipulated penalty equal to the difference between the amount of total eligible SEP costs incurred by Defendants and the amount set forth in Paragraph 21.

b. If Defendants have completed the SEPs, but EPA determines that the SEPs are not satisfactory, Defendants shall pay \$17,000, in addition to any penalty required under Subparagraph a, above.

c. If Defendants halt or abandon work on the SEPs, the Defendants shall pay a stipulated penalty of \$25,500, in addition to any penalty required under Subparagraph a, above. The penalty under this Subparagraph shall accrue as of the date specified for completing the SEPs or the date performance ceases, whichever is earlier.

41. Subject to the provisions of Paragraph 40.a.-c., above, Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simulta-

neously for separate violations of this Consent Decree.

Defendants shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

42. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

43. Stipulated Penalties shall continue to accrue as provided in Paragraph 41, above, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

44. Defendants shall pay Stipulated Penalties for violations of missed compliance milestones as set forth in Appendix A, or other noncompliance, as applicable, occurring between the date of lodging and the Effective Date of this Consent Decree within 30 days of the Effective Date of this Decree.

45. Defendants shall pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, Paragraph 8, above or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-07939 and United States Attorney's Office file number 2006V00075, and delivered to the office of the United States Attorney, Northern District of Indiana, Hammond Division 5400 Federal Plaza, Hammond, Indiana 46320, (219) 937-5500. Defendants shall not deduct Stipulated Penalties paid under this Section in calculating their federal income tax.

46. If Defendants fail to pay Stipulated Penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

47. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available

to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of CAA Section 112 or 502, 42 U.S.C. §§ 7412, 7661 or the implementing regulations, Defendants shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

#### IX. FORCE MAJEURE

48. A "force majeure event" is any event beyond the control of Defendants, their contractors, or any entity controlled by Defendants that delays the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

49. Defendants shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendants first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendants shall also provide written notice, as provided in Section XIV of this Consent Decree

(Notices), within seven days of the time Defendants first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendants' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendants' rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendants from asserting any claim of force majeure.

50. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendants to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVII of this Consent Decree (Modification).

51. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendants, the United States' position shall be binding, unless Defendants invoke Dispute Resolution under Section X of this Consent Decree. In any such dispute, Defendants bear the burden of proving, by a preponderance of the

evidence, that each claimed force majeure event is a force majeure event, that Defendants gave the notice required by Paragraph 49, that the force majeure event caused any delay Defendants claim was attributable to that event, and that Defendants exercised best efforts to prevent or minimize any delay caused by the event.

#### X. DISPUTE RESOLUTION

52. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

53. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then



the position advanced by the United States shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

54. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

55. The United States shall serve its Statement of Position within 45 days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

56. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree

(Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

57. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

58. In any dispute brought under Paragraph 54, Defendants shall bear the burden of demonstrating that their position clearly complies with and furthers the objectives of this Consent Decree and the Act. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

59. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so

provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 43, above. If Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

60. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendants or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendants' compliance with this Consent Decree.

61. Upon request, Defendants shall provide EPA or its authorized representatives splits of any samples taken by Defendants. Upon request, EPA shall provide Defendants splits of any samples taken by EPA.

62. Until five years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relates in any manner to Defendants' performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States may request copies of any documents, records, or other information required to be maintained under this Paragraph.

63. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendants shall deliver any such

documents, records, or other information to EPA. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

64. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (CBI) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

65. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or

affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

66. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

67. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 66. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 66. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

68. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants'

compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 6901 et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

69. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

70. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### XIII. COSTS

71. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Defendants.

XIV. NOTICES

72. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

(By U.S. Mail)

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-07939

United States Attorney  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320

To EPA:

Director, Air Enforcement Division  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code 2242-A  
Washington, DC 20004

Cynthia A. King  
U.S. Environmental Protection Agency  
Region 5  
C-14J  
77 West Jackson Boulevard  
Chicago, IL 60604

and



Sara Dauk  
U.S. Environmental Protection Agency  
Region 5  
AE-17J  
77 West Jackson Boulevard  
Chicago, IL 60604

To Defendants:

Walter J. Sieckmann, Chairman and CEO  
International Steel Services, Inc.  
Foster Plaza No. 7  
661 Anderson Drive  
Pittsburgh, PA 15220

and

Kenneth S. Komoroski  
Kirkpatrick & Lockhart, Nicholson Graham LLP  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15222

73. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

74. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

75. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

76. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of

resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

#### XVII. MODIFICATION

77. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. The terms and schedules contained in Appendices A and B of this Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects the Defendants' ability to meet the requirements or objectives of this Decree.

#### XVIII. TERMINATION

78. After Defendants have maintained continuous satisfactory compliance with the requirements of the Act and this Consent Decree for a period of two (2) years after the Effective Date of this Consent Decree, have complied with all other requirements of this Consent Decree, including those relating to the SEPs required by Section VI of this Consent Decree, and have paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Defendants may serve upon the

United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

79. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

80. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section X of this Decree. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 54 of Section X, until ninety (90) days after service of Defendants' Request for Termination.

#### XIX. PUBLIC PARTICIPATION

81. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappro-

priate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice.

XX. SIGNATORIES/SERVICE

82. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

83. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

84. Defendants agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

85. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

86. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding

among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

87. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants.

XXIII. APPENDICES

88. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the emission compliance test dates for the Facilities and modifications to be completed at each Facility prior to the emission compliance test dates; and

"Appendix B" is the Work Plan for implementing the  
SEPs.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 2006.

---

UNITED STATES DISTRICT JUDGE  
Northern District of Indiana

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. American Iron Oxide Co., et al., (N.D. Ind.), relating to alleged violations of the Clean Air Act at Defendants' facilities in Portage, Burns Harbor, and Grandview, Indiana:

FOR PLAINTIFF UNITED STATES OF AMERICA:

W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice

GREGORY L. SUKYS  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044  
(202) 514-2068  
(202) 616-6584 (FAX)

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. American Iron Oxide Co., et al., (N.D. Ind.), relating to alleged violations of the Clean Air Act at Defendants' facilities in Portage, Burns Harbor, and Grandview, Indiana:

JOSEPH S. VAN BOKKELEN  
United States Attorney  
Northern District of Indiana

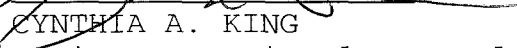
---

WAYNE AULT  
Assistant United States Attorney  
5400 Federal Plaza, Suite 1500  
Hammond, Indiana 46320  
219-937-5500  
219-852-2770 (FAX)



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. American Iron Oxide Co., et al., (N.D. Ind.), relating to alleged violations of the Clean Air Act at Defendants' facilities in Portage, Burns Harbor, and Grandview, Indiana:

  
BHARAT MATHUR  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  


  
CYNTHIA A. KING  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
C-14J  
77 W. Jackson Blvd.  
Chicago, IL 60604  
312-886-6831

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. American Iron Oxide Co., et al., (N.D. Ind.), relating to alleged violations of the Clean Air Act at Defendants' facilities in Portage, Burns Harbor, and Grandview, Indiana:

FOR DEFENDANTS AMERICAN IRON OXIDE COMPANY  
AND ~~MAGNETICS~~ INTERNATIONAL, INC.:

(Name of authorized official) Walter Sieckman  
Title CEO  
Address Foster Plaza #7-661 ANDERSON DRIVE  
Telephone Number Pittsburgh, PA 15220  
412.922.9765

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Kenneth S. Komoroski  
Name

Kenneth S. Komoroski  
Name Kirkpatrick + Lockhart Nicholson Graham

Kirkpatrick Lockhart Nicholson Graham  
535 Smithfield St. Pittsburgh, PA  
Address 15222

535 Smithfield St  
Pittsburgh, PA 15222  
Address

(412) 355-6556  
Telephone

**APPENDIX A**  
**EMISSION COMPLIANCE TESTING**  
**(Applicable Items Indicated by "X")**

	Portage A	Allenport	Portage B	Rockport	Magnetics A	Magnetics B
<b>Compliance Test Dates:</b>	<b>November 1, 2004</b>	<b>June 1, 2005</b>	<b>November 1, 2005</b>	<b>June 1, 2006</b>	<b>October 30, 2006</b>	<b>October 30, 2006<sup>1</sup></b>
<b>Plant Modifications:</b>						
<b>Packing</b>						
Packing	X	X	X	X	X	X
Grating	X	X	X	X	X	X
<b>Scrubber Pumps</b>						
Pumps	X	X	X	X	N/A	N/A
Piping & Install	X	N/A	X	X	N/A	N/A
<b>Demister Pad</b>						
Spool Section	X	X	X	X	N/A	N/A
Support/Hold Down	X	X	X	X	N/A	N/A
Demister Pad	X	X	X	X	N/A	N/A
<b>Multiple Nozzle Spray Header</b>						
Nozzle	X	N/A	X	X	N/A	N/A
Header & Tees	X	N/A	X	X	N/A	N/A
<b>Strainers</b>						
Absorber	X	X	X	X	N/A	N/A
Scrubber	X	X	X	X	X	X
<b>Flowmeters</b>						
Pres. Trans Scrub. #1&2	X	X	X	X	X	X
Make-up H2O Flow	X	X	X	X	X	X
Pres. Trans Scrub. #2	X	X	X	X	X	X
<b>Engineering</b>						
TRC Consulting	X	X	X	X	X	X
TRC Stack Testing	X	X	X	X	X	X
Burdell Chapman	X	X	X	X	X	X
ISSI	X	X	X	X	X	X
<b>Contract Labor</b>	X	X	X	X	X	X

<sup>1</sup> Magnetics B is not currently operating. In the event that Magnetics B is not operated during the period leading to scheduled compliance testing, then emissions compliance testing will be completed within six (6) months following Magnetics B being brought on-line.

## **APPENDIX B**

### **Supplemental Environmental Projects ("SEP") Work Plan**

**I. Odor Impact Assessment Program SEP.** AMROX will undertake an odor assessment in the manner and as set forth below, to be timely completed as required by the foregoing Consent Decree. As set forth below, a multi-phased approach to odor control studies is a cost-effective method of assessment, allowing the study to follow a logical sequence from many different directions, as necessary.

**1. Preliminary Study.**

TRC will gather process and operation information from the facility through interviews with facility operators and review of manuals and reports. This will supplement information already obtained by TRC. Information to be reviewed will include but not be limited to plant layout, process flow diagrams, equipment design, material safety data sheets, pollution control system design, emission source inventory, stack test reports, permits, operation schedule records and odor complaint records, if any. In addition to walking around the facility, the TRC project staff intends to drive around in downwind communities. Some of the driving will be performed during the late evening and early morning hours. Normally these hours are when stable inversion weather conditions, including the lake breeze or land breeze, are expected. Under these weather conditions, odors most likely would be perceived. Based on the information gathered, TRC will be able to determine whether, or the extent to which, the community odor episodes are caused by the emissions from the facility. If they are, the following elements, as necessary, will be conducted to determine which process in the facility is the most likely origin of these episodes.

**2. Odor Emission Source Sampling and Evaluation - as necessary.**

TRC will collect air samples at the facility. The locations of sampling will be determined during the preliminary study. Samples will be transported to TRC's Olfactory Laboratory in Windsor, Connecticut for the odor threshold determination by using a dynamic dilution system and odor panel, following procedures as described in ASTM E 679-91: Standard Practice for Determination of Odor and Taste Threshold by Forced-Choice Ascending Concentration Series Method of Limits. Odor emission rates of each of the potential odor sources will then be derived.

**3. Dispersion Modeling Impact Calculation – as necessary.**

Odor emission rate data and source physical dimensions, such as stack height, surrounding buildings, and weather conditions can be imported into a dispersion model developed by the US EPA, to estimate the numeric odor impact at downwind locations. With reversed calculation, the control requirement for each source can be estimated.

**4. Report – within 30 days of completion of the last necessary activity described above.**

A report will be provided summarizing TRC's methodologies and findings, as well as the conclusions and recommendations.

## APPENDIX B

**II. Health Risk Assessment ("HRA") SEP.** AMROX will undertake an HRA in the manner and as set forth below, to be timely completed as required by the foregoing Consent Decree. As set forth below, a tiered approach to increasingly refine the HRA is a cost-effective method to conduct such an assessment, allowing the HRA to start with the simplest screening and most conservative approach, and increase the complexity of successive tiered screening only if needed to improve the assessment.

**1. Identification of Toxic Emittants (e.g., HCl and Cl<sub>2</sub>) and Quantification of Emission Rates.**

Toxic emittants from the facility, including HCl and Cl<sub>2</sub>, will be identified along with their sources, emission rates, release heights and flow conditions.

**2. Tier I Screening HRA Without Using an Air Dispersion Model .**

Tier I screening requires comparison of the emission rates with de minimus emission levels, below which no further HRA screening is deemed necessary.

**3. Tier II Screening HRA Without Using an Air Dispersion Model – if necessary.**

Tier II screening entails a simplified, conservative estimation of air dispersion to obtain maximum potential ground-level concentrations at the nearest residences or for off-site workers. The screening estimates the Maximum Individual Cancer Risk (MICR), which is compared to thresholds of acceptability, depending on whether the sources are equipped with Best Available Control Technology for Toxics (T-BACT) or not.

**4. Tier III Screening HRA Using a Screening Air Dispersion Model – if necessary.**

Tier III screening uses a screening air dispersion model approved by the USEPA, either TSCREEN or SCREEN3, to provide a more refined estimate of ground-level ambient concentrations of the toxic emittants. Potential health risk is computed not only for the MICR, but also for chronic and acute noncarcinogenic impacts.

**5. Tier IV Screening HRA Using an Air Dispersion Model – if necessary.**

Tier IV screening uses a full-capability air dispersion model approved by the USEPA, such as ISC3, to provide the most refined estimate of ground-level ambient concentrations of the toxic emittants. Potential health risk is computed not only for the MICR, but also for chronic and acute noncarcinogenic impacts, and for excess cancer burden in an impacted population, if any.

**6. HRA Report.**

A report will be provided summarizing methodologies and findings, as well as the conclusions and recommendations.